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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1D 2009 67189

MICHELLE MORALES
14203 3/4 Calvert Street
Van Nuys, CA 91401

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Statement of Issues solely in his official capacity as the Executive Officer of the Physical Therapy Board of California Department of Consumer Affairs (Board).

2. On or about March 4, 2009, the Board received an application for a Physical Therapy Assistant License from Michelle Morales (Respondent). On April 28, 2010, the Board issued a letter, denying the application.

3. On or about May 25, 2010, Respondent requested a hearing to appeal the denial.

JURISDICTION

4. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.



STATUTES AND REGULATIONS

Code states:

"The Physical Therapy Board, hereafter referred to as the board, shall enforce and administer this chapterí .ö

6. Section 2660.2 of the Code states, in pertinent part:

"(a) The board may refuse a license to any applicant guilty of unprofessional conductí .
The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of the type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of physical therapy.

"(b) The applicant shall have the right to appeal the denial, or the issuance with terms and conditions, of any license in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

7. Section 2660 of the Code states:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

n of Section 17500.

ent of any license under this chapter.

- 3 "(c) Procuring or aiding or offering to procure or aid in criminal abortion.
- 4 "(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties
- 5 of a physical therapist or physical therapist assistant. The record of conviction or a certified copy
- 6 thereof shall be conclusive evidence of that conviction.
- 7 "(e) Habitual intemperance.
- 8 "(f) Addiction to the excessive use of any habit-forming drug.
- 9 "(g) Gross negligence in his or her practice as a physical therapist or physical therapist
- 10 assistant.
- 11 "(h) Conviction of a violation of any of the provisions of this chapter or of the Medical
- 12 Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting
- 13 the violating of, or conspiring to violate any provision or term of this chapter or of the Medical
- 14 Practice Act.
- 15 "(i) The aiding or abetting of any person to violate this chapter or any regulations duly
- 16 adopted under this chapter.
- 17 "(j) The aiding or abetting of any person to engage in the unlawful practice of physical
- 18 therapy.
- 19 "(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related
- 20 to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.
- 21 "(l) Except for good cause, the knowing failure to protect patients by failing to follow
- 22 infection control guidelines of the board, thereby risking transmission of blood-borne infectious
- 23 diseases from licensee to patient, from patient to patient, and from patient to licensee. In
- 24 administering this subdivision, the board shall consider referencing the standards, regulations, and
- 25 guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the
- 26 Health and Safety Code and the standards, regulations, and guidelines pursuant to the California
- 27 Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division
- 28 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne

As necessary, the board shall consult with the Medical Board
of Podiatric Medicine, the Dental Board of California, the

Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians
of the State of California, to encourage appropriate consistency in the implementation of this
subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees
and others to follow infection control guidelines, and of the most recent scientifically recognized
safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"(m) The commission of verbal abuse or sexual harassment."

8. Section 2661 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
charge of a felony or of any offense which substantially relates to the qualifications, functions, or
duties of a physical therapist is deemed to be a conviction within the meaning of this article. The
board may order the license suspended or revoked, or may decline to issue a license, when the
time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
an order granting probation is made suspending the imposition of sentence, irrespective of a
subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or
her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment."

9. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has
one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section
means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
Any action that a board is permitted to take following the establishment of a
conviction may be taken when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal, or when an order granting probation is made



of sentence, irrespective of a subsequent order under the
.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

"(3)

"(A) Done any act that if done by a licentiate of the business or profession in
question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if the
crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

"(b) Notwithstanding any other provision of this code, no person shall be denied a license
solely on the basis that he or she has been convicted of a felony if he or she has obtained a
certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
the rehabilitation of a person when considering the denial of a license under subdivision (a) of
Section 482.

"(c) A board may deny a license regulated by this code on the ground that the applicant
knowingly made a false statement of fact required to be revealed in the application for the
license."

10. California Code of Regulations, title 16, section 1399.20, states:

"For the purposes of denial, suspension or revocation of a license, pursuant to Division 1.5
(commencing with Section 475) of the code, a crime or act shall be considered to be substantially
related to the qualifications, functions or duties of a person holding a license under the Physical
Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a
person to perform the functions authorized by the license or approval in a manner consistent with
the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
following:

g to violate, directly or indirectly, or assisting in or abetting the
late any provision or term of the Physical Therapy Practice Act.

"(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with
the practice of physical therapy.

"(c) Violating or attempting to violate any provision or term of the Medical Practice Act."

CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

11. Respondent's application is subject to denial under Business and Professions Code
sections 2660.2; 2661; and 480; subdivisions (a)(1), (a)(2) and (a)(3); for having been convicted
of a crime that is substantially related to the qualification, function or duties of a physical
therapist. The facts and circumstances are as follows:

12. In March 2005, Respondent worked at a convalescent hospital called "The Cloisters".
On or about March 29, 2005, Respondent stole two debit cards from two elderly females who
were staying there. The debit card of one of the victims, N.G.,¹ was used on April 1, 2005, at the
Lemon Grove Target to make unauthorized purchases in two transactions in the amounts of \$7.68
and \$260.02. This incident was videotaped. The debit card of the other victim, G.B., was used
five times to make unauthorized purchases: 1) Union 76, \$34.56; 2) Walmart #5338, \$2.22;
3) Wal-Mart, \$145.03; 4) The Coffee Bean Q93, \$4.85; and 5) The Coffee Bean Q93, \$100.00.

13. On or about April 28, 2005, a criminal complaint was filed in the proceedings
entitled, *The People of the State of California v. Michelle Morales* in the Superior Court of
California, County of San Diego Central Division, Case Number CD190529, charging applicant
with four (4) felony counts including: two counts of violating Penal Code (PC) section 368,
subdivision (d) (Theft from elder/dependant adult (over \$400)), and two counts of violating PC
section 484, subdivision f(b) (Fraudulent use of another's access card). This felony Complaint
will hereinafter be referred to as "the Complaint."

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¹ The names of the victims have been reduced to initials to protect confidentiality.

of the Complaint alleged:

March 1, 2005, and April 4, 2005, MICHELLE MORALES, did

unlawfully violate a provision of law proscribing theft, embezzlement, forgery, fraud, and Penal Code Section 530.5 proscribing identity theft with respect to the property and personal identifying information of N.G., an elder, knowing and having reason to know that the victim was an elder, when the money, labor goods, services, and real and personal property taken and obtained was of a value exceeding four hundred dollars (\$400) in violation of Penal Code Section 368(d).ö

15. On or about April 28, 2005, Respondent pleaded guilty to, and was convicted of Count 1, which was reduced to a misdemeanor. Counts 2 through 4 were dismissed in the furtherance of justice. Thereafter, the court imposed sentence and ordered Respondent to spend three (3) days in jail, pay a fines in the approximate amount of \$727.00, complete her current counseling program, stay away from N.G and G.B. and placed her on three (3) years probation, with various terms and conditions. The conviction was expunged under Penal Code Section 1203.4, on July 25, 2008.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Denying the application of Michelle Morales;
2. Ordering Respondent, in the event, she receives a probationary license to practice Physical Therapy in California, to pay the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: July 23, 2010

Original Signed By:

STEVEN K. HARTZELL

Executive Officer

Physical Therapy Board of California

Department of Consumer Affairs

State of California

Complainant

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